

1-1 By: Lucio, Ellis, Hinojosa S.B. No. 60
1-2 (In the Senate - Filed November 8, 2004; January 31, 2005,
1-3 read first time and referred to Committee on Criminal Justice;
1-4 March 16, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 4, Nays 2; March 16, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 60 By: Hinojosa

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the punishment for a capital offense.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 12.31, Penal Code, is amended to read as
1-13 follows:

1-14 Sec. 12.31. CAPITAL FELONY. (a) An individual adjudged
1-15 guilty of a capital felony in a case in which the state seeks the
1-16 death penalty shall be punished by imprisonment in the
1-17 institutional division for life or for life without parole or by
1-18 death. An individual adjudged guilty of a capital felony in a case
1-19 in which the state does not seek the death penalty shall be punished
1-20 by imprisonment in the institutional division for life or for life
1-21 without parole.

1-22 (b) In a capital felony trial in which the state seeks the
1-23 death penalty, prospective jurors shall be informed that a sentence
1-24 of life imprisonment, life imprisonment without parole, or death is
1-25 mandatory on conviction of a capital felony. In a capital felony
1-26 trial in which the state does not seek the death penalty,
1-27 prospective jurors shall be informed that the state is not seeking
1-28 the death penalty and that a sentence of life imprisonment or life
1-29 imprisonment without parole is mandatory on conviction of the
1-30 capital felony.

1-31 SECTION 2. Section 508.046, Government Code, is amended to
1-32 read as follows:

1-33 Sec. 508.046. EXTRAORDINARY VOTE REQUIRED. To release on
1-34 parole an inmate who was convicted of a capital felony punishable by
1-35 imprisonment for life or an offense under Section 21.11(a)(1) or
1-36 22.021, Penal Code, or who is required under Section 508.145(c) to
1-37 serve 35 calendar years before becoming eligible for release on
1-38 parole, all members of the board must vote on the release on parole
1-39 of the inmate, and at least two-thirds of the members must vote in
1-40 favor of the release on parole. A member of the board may not vote
1-41 on the release unless the member first receives a copy of a written
1-42 report from the department on the probability that the inmate would
1-43 commit an offense after being released on parole.

1-44 SECTION 3. Subsection (a), Section 508.145, Government
1-45 Code, is amended to read as follows:

1-46 (a) An inmate under sentence of death or serving a sentence
1-47 of life imprisonment without parole is not eligible for release on
1-48 parole.

1-49 SECTION 4. Section 1, Article 37.071, Code of Criminal
1-50 Procedure, is amended to read as follows:

1-51 Sec. 1. (a) In a capital case in which the state does not
1-52 seek the death penalty, on a finding at trial that the defendant is
1-53 guilty of a capital offense, or on a plea of guilty or nolo
1-54 contendere by the defendant, the court shall conduct a separate
1-55 sentencing proceeding to determine whether the defendant shall be
1-56 sentenced to life imprisonment or life imprisonment without parole.
1-57 The proceeding shall be conducted in the trial court and before the
1-58 trial jury as soon as practicable, except that the court shall
1-59 empanel a new jury if required by Article 44.29(c) or if the
1-60 defendant has entered a plea of guilty or nolo contendere and
1-61 requested that a jury assess punishment. After a finding of guilty
1-62 is returned or after the defendant enters a plea of guilty or nolo
1-63 contendere, the defendant, with the consent of the attorney

2-1 representing the state, may change the defendant's election of who
 2-2 assesses punishment. In the proceeding, evidence may be presented
 2-3 by the state and the defendant or the defendant's counsel as to any
 2-4 matter that the court considers relevant to sentence, in the same
 2-5 manner as if the defendant were being sentenced in a noncapital
 2-6 case. This subsection may not be construed to authorize the
 2-7 introduction of any evidence secured in violation of the
 2-8 Constitution of the United States or of the State of Texas.

2-9 (b) At the proceeding under this section, the court shall
 2-10 instruct the jury that, after taking into account all the evidence
 2-11 described by Subsection (a), the jury shall assess as punishment on
 2-12 the defendant a sentence of life imprisonment in the institutional
 2-13 division of the Texas Department of Criminal Justice or a sentence
 2-14 of imprisonment in the institutional division for life without
 2-15 parole. The court shall further charge the jury that a defendant
 2-16 sentenced to imprisonment for life without parole under this
 2-17 section is ineligible for release from the institutional division
 2-18 on parole or mandatory supervision and that a defendant sentenced
 2-19 to imprisonment for life is ineligible for release from the
 2-20 institutional division on mandatory supervision and is ineligible
 2-21 for release from the institutional division on parole until the
 2-22 defendant's actual calendar time served, without consideration of
 2-23 good conduct time, equals 40 years.

2-24 (c) If the jury assesses punishment as life imprisonment or
 2-25 is unable to assess punishment, the court shall sentence the
 2-26 defendant to life imprisonment in the institutional division of the
 2-27 Texas Department of Criminal Justice. If the jury assesses
 2-28 punishment as imprisonment for life without parole, the court shall
 2-29 sentence the defendant to imprisonment in the institutional
 2-30 division for life without parole [If a defendant is found guilty in
 2-31 a capital felony case in which the state does not seek the death
 2-32 penalty, the judge shall sentence the defendant to life
 2-33 imprisonment].

2-34 SECTION 5. Subsection (e), Section 2, Article 37.071, Code
 2-35 of Criminal Procedure, is amended to read as follows:

2-36 (e)(1) The judge [court] shall instruct the jury that if the
 2-37 jury returns an affirmative finding to each issue submitted under
 2-38 Subsection (b) [of this article], it shall answer the following
 2-39 issue:

2-40 Whether, taking into consideration all of the evidence,
 2-41 including the circumstances of the offense, the defendant's
 2-42 character and background, and the personal moral culpability of the
 2-43 defendant, there is a sufficient mitigating circumstance or
 2-44 circumstances to warrant that a sentence of life imprisonment or
 2-45 life imprisonment without parole rather than a death sentence be
 2-46 imposed.

2-47 (2) The judge shall instruct the jury that:

2-48 (A) if the jury returns an affirmative finding on
 2-49 each issue submitted under Subsection (b) and a negative finding on
 2-50 an issue submitted under Subdivision (1), the judge shall sentence
 2-51 the defendant to death;

2-52 (B) if the jury returns an affirmative finding on
 2-53 each issue submitted under Subsection (b) and returns an
 2-54 affirmative finding on an issue submitted under Subdivision (1),
 2-55 the judge shall sentence the defendant to life imprisonment without
 2-56 parole; and

2-57 (C) if the jury returns a negative finding on an
 2-58 issue submitted under Subsection (b), the judge shall sentence the
 2-59 defendant to life imprisonment.

2-60 (3) The judge, after instructing the jury under
 2-61 Subdivision (2), shall further charge the jury that a defendant
 2-62 sentenced to imprisonment for life without parole under this
 2-63 article is ineligible for release from the institutional division
 2-64 of the Texas Department of Criminal Justice on parole or mandatory
 2-65 supervision and that a defendant sentenced to imprisonment for life
 2-66 under this article is ineligible for release from the institutional
 2-67 division on mandatory supervision and is ineligible for release
 2-68 from the institutional division on parole until the defendant's
 2-69 actual calendar time served, without consideration of good conduct

3-1 ~~time, equals 40 years. [The court, on the written request of the~~
3-2 ~~attorney representing the defendant, shall:~~

3-3 ~~[(A) instruct the jury that if the jury answers~~
3-4 ~~that a circumstance or circumstances warrant that a sentence of~~
3-5 ~~life imprisonment rather than a death sentence be imposed, the~~
3-6 ~~court will sentence the defendant to imprisonment in the~~
3-7 ~~institutional division of the Texas Department of Criminal Justice~~
3-8 ~~for life, and~~

3-9 ~~[(B) charge the jury in writing as follows:~~

3-10 ~~["Under the law applicable in this case, if the defendant is~~
3-11 ~~sentenced to imprisonment in the institutional division of the~~
3-12 ~~Texas Department of Criminal Justice for life, the defendant will~~
3-13 ~~become eligible for release on parole, but not until the actual time~~
3-14 ~~served by the defendant equals 40 years, without consideration of~~
3-15 ~~any good conduct time. It cannot accurately be predicted how the~~
3-16 ~~parole laws might be applied to this defendant if the defendant is~~
3-17 ~~sentenced to a term of imprisonment for life because the~~
3-18 ~~application of those laws will depend on decisions made by prison~~
3-19 ~~and parole authorities, but eligibility for parole does not~~
3-20 ~~guarantee that parole will be granted."]~~

3-21 SECTION 6. Subsection (g), Section 2, Article 37.071, Code
3-22 of Criminal Procedure, is amended to read as follows:

3-23 (g) If the jury returns an affirmative finding on each issue
3-24 submitted under Subsection (b) [~~of this article~~] and a negative
3-25 finding on an issue submitted under Subsection (e)(1) [~~of this~~
3-26 ~~article~~], the judge [~~court~~] shall sentence the defendant to death.
3-27 If the jury returns an affirmative finding on each issue submitted
3-28 under Subsection (b) and returns an affirmative finding on an issue
3-29 submitted under Subsection (e)(1) or is unable to answer an issue
3-30 submitted under Subsection (e)(1), the judge shall sentence the
3-31 defendant to imprisonment in the institutional division of the
3-32 Texas Department of Criminal Justice for life without parole. If
3-33 the jury returns a negative finding on any issue submitted under
3-34 Subsection (b) [~~of this article or an affirmative finding on an~~
3-35 ~~issue submitted under Subsection (e) of this article~~] or is unable
3-36 to answer any issue submitted under Subsection (b) [~~or (e) of this~~
3-37 ~~article~~], the judge [~~court~~] shall sentence the defendant to
3-38 imprisonment [~~confinement~~] in the institutional division [~~of the~~
3-39 ~~Texas Department of Criminal Justice~~] for life.

3-40 SECTION 7. Subsection (c), Article 44.29, Code of Criminal
3-41 Procedure, is amended to read as follows:

3-42 (c) If any court sets aside or invalidates the sentence of a
3-43 defendant convicted of an offense under Section 19.03, Penal Code,
3-44 [~~and sentenced to death~~] on the basis of any error affecting
3-45 punishment only, the court shall not set the conviction aside but
3-46 rather shall commence a new punishment hearing under Article 37.071
3-47 or Article 37.0711 of this code, as appropriate, as if a finding of
3-48 guilt had been returned. The court shall empanel a jury for the
3-49 sentencing stage of the trial in the same manner as a jury is to be
3-50 empaneled by the court in other trials before the court for offenses
3-51 under Section 19.03, Penal Code. At the new punishment hearing, the
3-52 court shall permit both the state and the defendant to introduce
3-53 evidence as permitted by Article 37.071 or Article 37.0711 of this
3-54 code.

3-55 SECTION 8. (a) The change in law made by this Act applies
3-56 only to an offense committed on or after the effective date of this
3-57 Act. For purposes of this section, an offense is committed before
3-58 the effective date of this Act if any element of the offense occurs
3-59 before the effective date.

3-60 (b) An offense committed before the effective date of this
3-61 Act is covered by the law in effect when the offense was committed,
3-62 and the former law is continued in effect for that purpose.

3-63 SECTION 9. This Act takes effect September 1, 2005.

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